

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Sheila A. Schmeits,  
Appellant,

v.

Box Butte County Board of Equalization,  
Appellee.

Case No: 18R 0100

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lot 6 BLK 1 Podhaisky's.
2. The Box Butte County Assessor (the County Assessor) assessed the Subject Property at \$103,308 for tax year 2018.
3. Sheila A Schmeits (the Taxpayer) protested this value to the Box Butte County Board of Equalization (the County Board) and requested an assessed value of \$92,078 or lower for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$102,813 for tax year 2018.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on April 2, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Sheila A. Schmeits was present at the hearing.
8. Terry Curtiss, Box Butte County Attorney, and Michelle Robinson, the County Assessor, were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Property has only had minor repairs to the house as needed. She took issue with the fact that her comparable properties had their valuations lowered during the protest period and yet her home only had a small decrease in the improvement value of \$495. The Taxpayer felt the home at 1007 Grand Avenue was the closest comparable home in terms of square footage, age and lot size. She stated the home at 1007 Grand Avenue only had about a \$1,000 increase whereas her home increased over \$21,000 for tax year 2018. The Taxpayer did not provide a property record file for 1007 Grand Avenue; however, the County Assessor did provide that property record file in the County Board’s exhibits. The Subject Property and 1007 Grand Avenue have differing quality and condition ratings, basement finishes and numerous other components; therefore, this property would not be considered a good comparable.
17. The Taxpayer stated the property one block south, 1120 Laramie Avenue, had its valuation lowered from \$104,420 to \$68,503 during the county protest period. The County Attorney asserted the County Assessor recommended no change in value and the

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<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

action of the County Board lowering the value of 1120 Laramie Avenue has differing circumstances and conclusions and shows no evidence that the original value was incorrect and would have no bearing on the Subject Property. No property record file was offered as evidence for the Commission to see if the property is comparable.<sup>9</sup>

18. The Taxpayer stated a property owned by James Cunningham, 732 E 7<sup>th</sup>, was lowered from \$101,974 to \$84,000 in 2018 by the County Board during the protest period. According to the Form 422, the County Assessor recommended no change in value but the County Board lowered the value after testimony and evidence presented or a recent appraisal or sale. No property record file was offered as evidence for the Commission to see if the property is comparable.
19. The County Assessor stated she reassessed all residential properties in Alliance. She utilized an updated effective age chart for the improvement values. The Subject Property was inspected on the exterior only during the protest period and a small correction was made to the Subject Property lowering the value \$495.
20. The Taxpayer utilized a search of sales presumably from the County Assessor's web page and averaged the lot, outbuilding and dwelling values for 2017 and 2018. Simply averaging the assessments to arrive at a quantifiable value is not an accepted appraisal method.
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

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<sup>9</sup> Paragraph 7 of the Commission's Order for Single Commissioner Hearing and Notice clearly states that "Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed." The paragraph further states that "the information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing." This instruction is included in the Order for Hearing because, although most counties in Nebraska maintain websites containing some information about properties, evaluation of comparables for equalization purposes usually requires the more detailed information available only in the property record file. For the properties located at 1120 Laramie and 732 E 7th, the Taxpayer provided printouts of the County's web pages rather than the official property record files. As a result, the Commission does not have sufficient information to determine whether the properties are truly comparable and what adjustments, if any, should be made to equalize the Subject Property.

Land	\$ 6,678
<u>Improvements</u>	<u>\$ 96,135</u>
Total	\$102,813

3. This Decision and Order, if no further action is taken, shall be certified to the Box Butte County Treasurer and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2018.
7. This Decision and Order is effective on April 16, 2019.

Signed and Sealed: April 16, 2019

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James D. Kuhn, Commissioner